

ORIGINAL

2-6 CV

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN D. PERKEY and THERESA M.
PERKEY,

Plaintiffs

vs.

RELIABLE CARRIERS, INC.,
DANIEL JOSEPH BEMBEN and KENT,

Defendants

CIVIL ACTION NO. 1:CV-00-1639

JURY TRIAL DEMANDED

Magistrate Judge Smyser

FILED
HARRISBURG, PA

MAY 19 2003

MARY E. D'ANDREA, CLERK
Per
Deputy Clerk

**DEFENDANT RELIABLE CARRIERS, INC. AND DANIEL
JOSEPH BEMBEN'S MOTION IN LIMINE TO EXCLUDE PLAINTIFF'S EXPERT ,
HARRY M. LEISTER, JR., F.S.A.**

AND NOW come Defendants Reliable Carriers, Inc. and Daniel Joseph Bemben, by and through their attorneys, Godfrey & Courtney, P.C., and state the following:

1. Plaintiffs have retained the services of Mr. Leister, an economist. Mr. Leister has written a report concerning Plaintiff John D. Perkey's alleged future wage loss because of his "total disability." This report is attached as Exhibit "A".
2. Plaintiffs have failed to produce a Curriculum Vitae for Mr. Leister.
3. In his report, Mr. Leister states in his assumptions that Mr. Perkey "has been unable to work since the date of the accident and for the purpose of this preliminary report I have assumed that he is totally and permanently disabled."
4. Based upon this assumption, Mr. Leister opines that Mr. Perkey has sustained a combined loss of earnings capacity and fringe benefits in the amount of \$1,401,190.00.
5. Mr. Leister's assumption and calculations are flawed and lack foundation since they are not supported by medical testimony. Specifically, none of Plaintiffs' treating doctors have rendered him "totally and permanently disabled."

6. Dr. Rychak testified in his deposition as follows:

Q. Now, Doctor, you've testified about Mr. Perkey's ability to work. Am I correct in that Mr. Perkey in your opinion is **not totally disabled** in that he cannot do any job?

A. Correct. I mean, there are jobs he could probably do. What I testified to is that he had a FCE in 2000 and if somebody wanted an absolute parameters, then we would do an updated FCE.

(See Rychak deposition at 102, which is attached to Defendants' Motion in Limine as Exhibit "B".

Q. Okay. Doctor, just so the jury is aware, you're not claiming today that Mr. Perkey is totally disabled?

A. No.

(See Exhibit "B: at p. 144.)

7. Dr. Rychak went on to state that Mr. Perkey's alleged right shoulder injury does not render him totally disabled. See Exhibit "B" at p. 107.

8. Lastly, Mr. Leister's report fails to account for Mr. Perkey's current earning capacity.

WHEREFORE, Defendants Reliable Carriers, Inc. and Daniel Joseph Bemben respectfully request this Honorable Court enter an Order precluding Plaintiffs from introducing

the expert testimony of Harry M. Leister, Jr. , F.S.A. on the issue of loss of future earnings capacity and fringe benefits.

Respectfully submitted,

GODFREY & COURTNEY, P.C.

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